

## LAW ENFORCEMENT CRIMINAL ACTS IN FISHERIES

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### ABSTRACT

Indonesia, as an island nation that makes the sea as a maritime axis, is faced with law enforcement issues. No exception around the territorial waters of Maluku as one of the archipelago provinces in Indonesia which is rich in marine resources so that illegal fishing activities often occur. Law enforcement against the handling of criminal acts in the field of fisheries can run well if it takes into account the factors that influence the process of law enforcement itself. This study aims to analyze the factors that influence law enforcement against criminal offences in the field of fisheries. The research method used is juridical legal research which is then complemented with socio-legal analysis to examine the factors that influence the process of law enforcement in the field of fisheries. The approach used in this research is the statutory approach and conceptual approach. Data sources needed in this study are primary legal materials, secondary standard materials and traditional tertiary materials. Furthermore, the data will be analyzed qualitatively.

Based on the research results of law enforcement in the field of fisheries in the area of fishing is influenced by legislation that turns out to have weaknesses both in terms of criminal law (criminal acts, criminal liability and criminal) and administrative law (licensing and supervision); increasing human resources to produce professional law enforcement officers and inter-institutional coordination so that sectoral egos do not occur; lack of facilities and infrastructure to support the work of law enforcement officials; lack of participation or community participation in assisting law enforcement officers and lack of a legal culture both for law enforcement officials themselves and

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the community to understand, understand and have legal awareness. It is expected that in the future, to be able to produce effective and efficient law enforcement processes, the factors that influence this law enforcement process must be considered.

Keywords: law enforcement, crime, fisheries

## A. INTRODUCTION

At the 11th United Nations Conference of the United Nations Conference on the Standardization of Geographical Names (from now on abbreviated as UNCISG) which took place in August 2017 in New York, United States, the Indonesian Delegation represented by the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia (from now on abbreviated KKP RI ) reports that Indonesia has 16 056 islands [1] which have been named and verified, while the length of Indonesia's most recent coastline is 99,093 km<sup>2</sup> [2]. This new data refers to the results of a study of the Mapping of the Island Name Standardization Team, Calculation of the Coastline and the Area of Indonesia. This data exceeds the length announced by the United Nations in 2008, which is 95,181 km<sup>2</sup> or many parties, namely, 81,000 km<sup>2</sup> often use even that. With this geographical location, Indonesia is blessed by God Almighty, the potential of living natural resources, artificial resources and environmental services that are important for people's lives.

This natural resource potential indeed needs to be managed in an integrated manner so that it can be utilized sustainably. This is following President Jokowi's commitment to make Indonesia a global maritime axis by using the sea independently and responsibly. One of them is to make the marine and fisheries sector, one of Indonesia's development priorities, namely the achievement of seafood sovereignty [3].

The step to make Indonesia a global maritime axis is faced with the problem of maintaining maritime security and sovereignty from illegal fishing activities [4]. The potential of the sea that has not been able to be utilized to the maximum extent possible for the welfare of the people was stolen and taken away by foreign fishermen, causing substantial economic losses [5]. Illegal fishing activities that occur in WPP NRI are caused by one of the law enforcement systems at sea that is still weak and not comparable between the strength of the surveillance fleet with the sea area that is the object of surveillance. Based on 2013-2016 KKP data based on the location of illegal fishing catches that occurred in WPP NRI dominated by WPP NRI 711 as many as 163 ships covering the waters of the

Karimata Strait, the Natuna Sea, and the South China Sea. As many as 51 boats WPP NRI 716 surrounding the Sulawesi Sea and the northern part of Halmahera Island and WPP NRI 571 as many as 48 ships covering the waters of the Malacca Strait and the Andaman Sea. WPP NRI 711 is the target of the perpetrators of illegal fishing, and it can even be called the entrance gate of criminal fishing actors because neighbouring countries directly border it and fisheries supervision in the region is not yet maximized [6].

Fisheries criminal acts such as Illegal, Unreported and Unregulated Fishing (starting now abbreviated as IUU Fishing) are forms of criminal offences in the field of fisheries that can occur in all fishery activities, regardless of location, target species, fishing gear used and intensity of exploitation. Can appear at all fisheries scales, both local or traditional fisheries and the fishing industry. Such can also occur in national and international jurisdictions [7]. To overcome the problem of illegal fishing, law enforcement is needed. Law enforcement is critical in the rule of law because, through law enforcement, rules that are limited to the law in books can be actualized as guidelines for behaving in the life of the nation and state. The process of upholding these legal norms is also included in the field of fisheries as one of the areas concerning the lives of many people. The state regulates it through legislation which certainly has criminal sanctions as an ultimum remedium. In this paper, the author examines and analyzes law enforcement against criminal offences in the field of fisheries by taking into account the factors that influence the course of law enforcement itself, especially in the process of law enforcement of criminal acts in the field of fisheries in Maluku Province.

## B. METHOD

The research method used in this paper is the normative legal research method, which sees law as a norm system [8]. then that will be supplemented by socio-legal studies or studies of the law using the approach of legal science and other social sciences [9] to discuss the factors that influence law enforcement against criminal acts in the field of fisheries. Furthermore, the approach used in this research is the statutory approach and conceptual approach. The traditional materials used in this study are primary, secondary and tertiary legal materials [10]. The technique of collecting data is through literature study and conducting in-depth interviews with stakeholders related to the issues raised. Furthermore, the data are analyzed qualitatively, i.e. by describing the data through word forms and used to interpret and interpret the oral or written results of the data or behaviour observed [11].

## C. LITERATURE

### 1. Definition of Law Enforcement

Satjipto Raharjo expressed his opinion on law enforcement as follows: [12] "Concrete implementation of law in people's lives. After lawmaking is done, it must be carried out concretely in people's daily lives, and it is law enforcement.". Whereas Soerjono Soekanto argues that law enforcement is as follows: [13] "The activity of harmonizing the relationships of values that are set out in the rules/views of values that are solid and manifest and act as a series of translation of the final stage of value to create, maintain and maintain peaceful social relations." Santy Dellyana also expressed his opinion on law enforcement, as follows: [14] "Law enforcement is an effort to realize legal ideas and concepts that people expect to become a reality. Law enforcement is a process that involves many things."

From some of the expert opinions above, it can be concluded that law enforcement is an effort to transfer or move ideas or concepts that were limited to the formulation of articles of law (law in the book) into real life (law in action) as a nation and state. So that concrete implementation of the law can be felt by the community. According to Soerjono Soekanto, factors influencing law enforcement are: [15]

### 1. Legal Factors

The implementation of law in the field there are times when there is a conflict between legal certainty and justice; this is caused by the conception of justice as an abstract formula. In contrast, legal certainty is a normatively determined procedure.

### 2. Law Enforcement Factors

The mentality or personality of law enforcement officers plays a vital role if the rules are good, but the quality of officers is not right, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcement

### 3. Supporting Factors or Facilities

Factors supporting facilities or facilities include software and hardware; one example of software is education. Education received by law enforcement officials is limited and not comparable with the development of the cases they face today.

### 4. Community Factors

law enforcement comes from the community and aims to achieve peace in the city. Every citizen or group, more or less, has legal awareness. The problem that arises is the level of legal compliance, namely high, moderate, or low legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law in question.

## 5. Cultural Factors

Based on the concept of everyday culture, people often talk about culture. Culture, according to Soerjono Soekanto, has an essential function for humans and society, namely regulating so that humans can understand how they should act, act, and determine their attitudes when they relate to others.

## 2. Definition of Criminal Acts in the Field of Fisheries

In RI Law Number 31 the Year 2004 Concerning Fisheries jo RI Law Number 45 the Year 2009 Concerning Amendments to Law RI Number 31 the Year 2004 Concerning Fisheries there is no article formulation that states clearly and the definition of fisheries criminal acts or criminal offences in the fishery sector. Only Article 103 of the Fisheries Law qualifies for offences for crimes and violations. As explained in the previous chapter, the criminal acts referred to in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, Article 94, Article 94A and Article 94A are crimes. In contrast, the criminal acts as referred to in Article 87, Article 89, Article 90, Article 95, Article 96, Article 97, Article 98, Article 99, article 100D is a violation.

According to Djoko Tribawono [16], a fishery crime is an act which by law threatens the crimes against them or whoever commits a show that is prohibited by the Fisheries Act (RI Law No. 31 of 2004 concerning Fisheries jo RI Law No 45 2009 regarding Amendments to Law RI No. 31 of 2004 concerning Fisheries). Nowadays, fisheries crime becomes an important issue because of the rise of criminal acts in the field of fisheries. Examples of criminal acts in the area of fishing are fishing with prohibited tools, fish bombing, illegal fishing business and many other cases. According to RI Law No. 31/2004 in conjunction with RI Law No. 45/2009 (from now on abbreviated as Fisheries Act 2009) activities that are included in fisheries starting from preproduction, production, management to marketing carried out in a fisheries business system [17].

Therefore, the definition or term of a fishery crime is not formulated explicitly and clearly in the Fisheries Law, and there is only an offence qualification for corruption and violations. From there, the

fishery crime can be interpreted as an act that is threatened with criminal action against those who violate the rules in the fisheries law as defined by Djoko Tribawono above. For writers, this too is something that must be a concern. Because it would be nice if the Fisheries Act as a legal umbrella in the criminal law enforcement process in the field of fisheries clearly and clearly states the definition or terminology of what is a fishery crime. So that we can have one clear view or understanding related to the definition of a fishery crime, in this regard, people's opinions or knowledge will focus on three (3) acts that are often carried out and become synonymous with the term fisheries criminal act, namely illegal fishing (Illegal), unreported fishing and fishing which is not following the procedure (Unregulated Fishing) or commonly known as Illegal, Unreported and Unregulated (IUU) Fishing.

#### D. RESULTS AND DISCUSSION

##### 1. Identify and correct weaknesses in the Fisheries Law

###### 1.1. Criminal law

Discussing the failings of the Perikanan Law in terms of criminal law can be reviewed in terms of three main criminal law issues, namely: Criminal Acts, Article 104 of the Fisheries Law which regulates specific security bills for theft of fish, but for other perpetrators of criminal acts such as narcotics or trafficking must still be processed. However, there is no explicit provision regarding the determination of the maximum fine by the expert to assist the calculation of state losses. Furthermore, in terms of criminal liability, there are no clear and clear boundaries in the formulation of articles related to criminal liability for corporations. It will be challenging to determine which parties can be held liable for criminal liability. There should be a clear and transparent formula regarding criminal prosecution for corporations. Furthermore, in terms of criminal sanctions, the 2009 Fisheries Law does not formulate explicitly and the replacement provisions if the defendant does not pay the fine.

Thus it will refer to the provisions of Article 30 of the Criminal Code if the unpaid fines are replaced by imprisonment for a maximum of 6 months. However, in its implementation, Article 102 of the Fisheries Law Act was accompanied by a Supreme Court Circular (from now on abbreviated to SEMA) Number 3 of 2015 concerning the Imposition of the Results of the 2015 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Tasks for the Court. In the formulation of the law on the criminal chamber in the field of fisheries (illegal fishing), it is said that if a criminal act occurs in the EEZ region, the defendant can only be subject to a criminal fine without being imprisoned in the place of a fine. What if the defendant (foreigner) is unable/unwilling to pay a fine,

then no forced effort can be made by the prosecutor. SEMA is often used by Judges as a reference, even though SEMA is not included in the legislation as regulated in Law Number 12 of 2011 [18]. Besides, the Fisheries Law as an Administrative Penal Law should be more effective in the use of administrative sanctions. Criminal law (in this case, criminal sanctions) should be used as an *Ultimum Remedium* and can ease the burden on the state in financing prisoners.

## 1.2. Administrative Law

### - Licensing

In his research, Salmon Nirahua explained that when referring to the *Junta* Fisheries Law Regulation of the Minister of Maritime Affairs and Fisheries Number: Per.05 / MEN / 2008 concerning Capture Fisheries Business, the authority of the regional government to issue a fishing license is an authority based on a delegation from the Central Government (Minister of Maritime Affairs and Fisheries) with the consequence that the source of this Regional Government can be withdrawn. This is different if it refers to the provisions in the Regional Government Law. The authority of the Regional Government in licensing is the attribution authority. As attribution authority, the charge is original, which can only be withdrawn by the Central Government if changes are made to the Articles relating to the licensing [19]. The author agrees with Salmon Nirahua. Because this is contrary to the concept of Regional Autonomy. The regions should be given authority to manage natural resources (sea) which is part of it, namely for the Province as far as 12 miles and 1/3 of it for regencies/cities, including in terms of licensing. Especially for areas that have a wider sea area than the mainland such as the Maluku Islands. So that local governments can control the licensing process that will be issued or has been issued in terms of the management of marine resources belonging to the region.

Related to licensing issues, the former Minister of Fisheries of the Republic of Indonesia (2014-2019) Susi Pudjiastuti had suspected the moratorium policy would cause many ex-foreign vessels to flee. According to him, that proves that most of the foreign fishing vessels do not belong to Indonesian businesspeople. Allegedly there are hundreds of ex-foreign ships in Indonesia that actually "remain foreign" alias does not belong to local entrepreneurs. The permission they have is bully or manipulation results (fake). The large number of Red and White fishing vessels that are owned by foreign businessmen is not new. Based on an investigation by *Tempo* magazine [20] in 2014, found many such containers. These ships are called *stealth ships* or *doll ships*. On paper, they are Indonesian ships, but the real owners are in Thailand, China, Taiwan, or the Philippines.

### - Oversight

Considering the vast area of the sea and fishing vessels both Indonesian fishing vessels and foreign fishing vessels and of course using more sophisticated equipment or equipment, the KPP needs a more extensive surveillance fleet and is equipped with security systems and work systems more sophisticated ship.

## 2. Forming Law Enforcement Officials

An Integrated Criminal Justice System carries out law enforcement in the field of fisheries in the area of fishing which includes fisheries supervisors, fisheries investigators, fisheries prosecutors and fisheries courts. Those who are involved in law enforcement in the field of fisheries are referred to as law enforcement officers (in the area of fishing). When conducting in-depth interviews separately with several law enforcement officers in the field of fisheries, some said that there was no sectoral arrogance (sectoral ego) in the case handler, everything went well. There is mutual coordination between related institutions. But on another occasion, there were also law enforcement officials who said that there was still a sectoral ego in handling illegal fishing cases.

In the Regulation of the Minister of Maritime Affairs and Fisheries Number PER / 11 / MEN / 2006 concerning Amendment to the Ministerial Regulation Number PER / 13 / MEN / 2005 concerning the Coordination Forum for Crime Management in the Field of Fisheries found that there are 10 (ten) related agencies that are in one chain the eradication of Illegal Fishing which determines the process of law enforcement for fisheries crime, this suggests that there must be coordination between related institutions or agencies (multisectoral) so that the law enforcement process for handling criminal acts in the field of fisheries can run effectively and efficiently.

## 3. Building Facilities and Infrastructure

There is no specific regulation governing fishing grounds or other ports outside the fishing port. There is only general regulation regarding the obligations of fisheries supervisors in terms of field supervision. As a result, the source of state revenue from the fisheries sector was reduced due to the unregistered capture fisheries production. Likewise, when criminal acts in the field of fisheries such as Illegal unreported and unregulated fishing involving ship crews (from now on abbreviated as ABK) are foreign citizens, then often ABK or Skippers who are foreign citizens (from now on abbreviated as foreigners) are usually deposited in detention centres immigration (from now on shortened to Rudenim), even though the Rudenim's capacity cannot accommodate the AKB and the Foreign Chief of Staff. Likewise, there are no facilities that can be used to store evidence of fisheries criminal acts



such as ships and fishing equipment. There is also no party responsible for safeguarding the evidence, and there is no budget provided for those who will be responsible for protecting it. All of these pose challenges or obstacles to the law enforcement process in the field of fisheries.

#### 4. Organizing People Who Have Legal Awareness

From interviews with relevant agencies (explanation of law enforcement) in the criminal law enforcement process in the field of fisheries around the Maluku region, community participation is an integral part in the process of overcoming criminal acts in the fisheries sector. Law enforcement officials cannot work alone without the support or involvement of members of the community. Considering the number of patrol vessels/fleets and personnel that are not comparable to the vast Maluku sea area, the community's role in providing information and reporting various fisheries criminal acts that occur around them to the authorities is a form of community support in law enforcement processes.

As carried out by the Maluku Province Maritime and Fisheries Service by forming community watchdog groups whose task is to assist the supervisors of the Maluku Maritime and Fisheries Service (from now on abbreviated DKP) in carrying out the process of monitoring various suspicious fisheries actions. In 10 (ten) Regencies / Cities 75 (seventy-five) supervisory community groups have been formed. In 2019, 4 (four) new supervisory community groups were included in 2 (two) Regencies, namely 2 (two) supervisory community groups in West Seram Regency (from now on abbreviated as SBT) and 2 (two) community watchdog groups in Southeast Maluku Regency.

#### 5. Regulate Legal Culture

Building a community legal culture is part of the nation character-building effort. Traditional culture is the values, attitudes and behaviour of community members in everyday life [21]. Indonesian law and legal culture indeed cannot be separated from Pancasila and the 1945 Constitution. For this reason, it is necessary to have counselling or socialization of law and other scientific activities to be able to develop the legal culture of the community, so that the values or behaviours that appear are values or actions that are by the values Pancasila. To maximize counselling and socialization of law to the public, the presence of functional legal counsellors is needed. Even though the number of practical law educators is not proportional to the number of people (villages) in Indonesia. Ideally, 85,000 (number of villages in Indonesia) are needed, assuming one town needs one legal counsellor. In 2017, it was recorded that Maluku Province had 1198 villages [22]. Then ideally Maluku Province must have 1198 legal counsellors.

## E. CONCLUSION

Law enforcement against criminal acts in the fishery sector can run well if it takes into account the factors that influence the enforcement of the law itself, such as legislation, law enforcement officers, facilities and infrastructure, community participation and legal culture. Identify and correct weaknesses contained in fisheries legislation formulation; increase the professionalism of law enforcement officers and the mutual coordination between institutions involved in law enforcement in the field of fisheries; the provision of facilities and infrastructure that can support law enforcement; involving community participation, and improve the legal culture of all parties involved in law enforcement against criminal offences in the field of fisheries so that the law enforcement process can run effectively and efficiently.

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